



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 27, 1996

Mr. Yuri Calderon
Assistant School Attorney
Houston Independent School District
Hattie Mae White Administration Building
3830 Richmond Avenue
Houston, Texas 77027-5838

OR96-0257

Dear Mr. Calderon:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request ID# 26560.

The Houston Independent School District (the "district") has received a request for information regarding an incident involving the requestor's son, a student of the district, and one of the district's teachers, Mr. Riggins. Specifically, the requestor seeks the following:

- I. List of all students riding Bus Route 24.
- II List of all witnesses [to the incident] and their written statements.
- III. List of all written complaints and/or accusations involving Mr. Riggins in similar previous circumstances.

You believe that, because "many of the requested documents are replete with references to individual students," section 552.114 of the Government Code requires the district to withhold the information. You advise that the district will release to the requestor any responsive documents that do not fall within the scope of section 552.114. You have submitted to this office for review copies of the requested information

The district originally requested a ruling from this office on May 23, 1994, and claimed that section 552.114 excepted the records from required public disclosure. We informed you in a letter dated January 2, 1996, that pursuant to Open Records Decision No. 634 (1995), the school district may withhold information excepted from disclosure under sections 552.114 and 552.026 without the necessity of requesting an attorney

general decision as to those exceptions. We noted that if you wished to preserve your discretionary exceptions, you were required to de-identify any student records and resubmit them to this office with your arguments as to why the discretionary exceptions applied. You have de-identified the student records and resubmitted them for review. In your original request for a ruling, you did not claim that any discretionary exceptions applied to this request for records. Although you have not raised any discretionary exceptions, you continue to contend that section 552.114 of the Government Code excepts all of the records from required public disclosure.

Section 552.114(a) of the Government Code excepts from required public disclosure "information in a student record at an educational institution funded wholly or partly by state revenue." Section 552.114 applies to schools that do not receive any federal funding. *See Open Records Decision No. 431 (1985) at 3* (stating that federal law prevails over inconsistent state law).

On the other hand, section 552.026 of the Government Code governs the release of student records by an educational institution that receives federal funds under programs the federal government administers. *See Open Records Decision No. 480 (1987) at 3* (quoting *Open Records Decision No. 427 (1985)*). Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974.

We assume that the district receives federal funds under at least one program that the federal government administers. We therefore must consider whether the district may release the requested documents under the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g.

FERPA provides that no federal funds will be made available under an applicable program to any educational agency that denies or effectively prevents the parents of a student who has been in attendance at a school of the educational agency the right to inspect and review the student's education records. *Id.* § 1232g(a)(1)(A). FERPA also provides that that no federal funds will be made available to an educational agency that releases to anyone but certain enumerated federal, state, and local officials and institutions personally identifiable information contained in a student's education records unless the student's parent has authorized otherwise. *See Id.* § 1232g(b)(1). "Education records" consist of those records that contain information directly related to a student and that an educational agency or institution or a person acting for such agency or institution maintains. *Id.* § 1232g(a)(4)(A).

Pursuant to FERPA, the district must release to the requestor all education records of her son. FERPA prohibits the district from releasing to the requestor the education records of other students, but only to the extent that the records identify or tend to identify a particular student or a student's parents. *See Open Records Decision Nos. 332*

(1982) at 3, 206 (1978) at 2. The records you have submitted for our review constitute education records for purposes of FERPA.

We will consider first the information requested in item I, the list of all students riding Bus Route 24. We assume that this list contains information that identifies particular students; furthermore, we do not understand that the district has received the consent of any of the students' parents (other than the requestor) to release the information to the requestor. See Open Records Decision No. 332 (1982) at 3. Accordingly, we conclude that, unless the district has received parental consent to release any or all of the information, the district must withhold those portions of the list requested in item I that serve to identify the student or his or her parents. The district must, of course, release to the requestor information on the list that pertain to her child or children.

We will next consider the remainder of the information you have submitted for our review, which is largely responsive to item III. In our opinion, only the portions of the records that have been redacted tend to identify particular students or a student's parents. The district must release to the requestor the remaining information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/ch

Ref.: ID# 26560

Enclosures: Marked documents